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Export Controls

Conventional Arms and Dual-Use Technologies

by Peter Sullivan

Conclusions

- In December 1995, in The Hague suburb of Wassenaar, the United States and its allies and former adversaries, including Russia, agreed to establish an export control arrangement to deal with post-Cold War security risks arising from transfers of conventional arms and dual-use goods and technologies. The objective is to promote greater transparency and responsibility and as well as restraint in such transfers.
- At their Dec. 13, 1996 meeting the 33 member states of the Wassenaar Arrangement (WA) noted that they have now begun work on the basis of the Ainitial elements," the WA's principles and procedures, which were agreed to in July.
- Although WA members have national policies against selling arms or sensitive dual-use items for military end-uses in "states of serious concern," key members oppose measures that would diminish their freedom of action. Thus the WA does not formally identify the "states of serious concern" (Iran, Iraq, North Korea and Libya). Furthermore, the requirements to exchange information on transfers to non-members are limited in scope and timeliness. Most importantly, the WA failed to secure agreement on notification prior to transferring arms to regions of instability (Middle East and South Asia) or on disclosure of dual-use transfers to purported civilian end-users in states of concern. Thus, the WA lacks the tools needed to meaningfully implement its objectives.

Origins

At the 1993 Vancouver summit meeting, President Boris Yelstin complained to President Bill Clinton that the Coordinating Committee on Export Controls (COCOM) was a "relic of the Cold War." (Formed in 1949, COCOM consisted of NATO, Japan and Australia. The members agreed to prevent exports of militarily significant, including dual-use, technology to Commu-nist countries.) Promising a fresh appraisal, Clinton also pressed Yeltsin to cooperate with U.S. export control efforts, including stopping Russia's arms transfers to Iran. This led to COCOM's termination in March 1994, Russia's agreement not to enter new arms sales contracts with Iran, and it culminated in the multilateral Wassenaar Arrangement (WA) agreements in December 1995 and July 1996.

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The agreement to establish the WA, based in Vienna, was concluded after extended and contentious bilateral and multilateral negotiations. The result is a bare bones framework espousing the high-minded principles, but little of the muscle, sought by United States. However, at U.S. insistence, the initial guidelines are subject to further elaboration and definition. The WA may follow the pattern set by the nonproliferation export control regimes which were born under similar modest circumstances, but have since grown incrementally (albeit with much room for additional improvement). As with those regimes, the key ingredient for growth will be continued U.S. leadership.

The Initial Elements

On the positive side, the WA is the first global mechanism for controlling transfers of conventional arms and related (including dual-use) technologies and promoting greater transparency and responsibility in transfers of these items to "prevent destabilizing accumulations."

The WA has a Munitions List and Dual-Use List of controlled goods and technologies that borrow from COCOM's control lists and serve as the basis of participants' national control systems to prevent unauthorized transfers and re-transfers.

The WA is intended to complement and reinforce non-proliferation regimes, without duplication. It does so in at least three ways: First, by covering goods and technologies that, for the most part, are not covered by other regimes; second, by requiring that members adhere to those regimes and to other non-proliferation norms; and, third, by requiring members to establish effective export controls on items covered by nonproliferation regimes, as well as those on the WA's lists.

The WA does not have a COCOM-style proscribed countries list-indeed, targeting specific states or groups of states is expressly disclaimed. However, participants have agreed to enhance cooperation to "prevent the acquisition of arms and sensitive dual-use items for military end-use if the situation in a region or the behavior of a state is or becomes a cause for serious concern."

While the United States is explicit about the identities of four states of concern (Iran, Iraq, Libya and North Korea), there is only a tacit understanding among participants on the identities of the four. As such, there is no technical requirement for WA membership concurrence if a participant wishes to change its national policy. Such an understanding is indicative of the insistence of key participants on retaining freedom of action to pursue their political and commercial interests. Thus, for example, Russia and France keep their options open under the WA while they seek to relax the far more restrictive UN sanctions on Iraq. With respect to Iran, however, the United States has bilateral agreements whereby Russia, the Czech Republic, Hungary, Poland undertake not to enter new contracts to sell arms to Iran, although deliveries under existing contracts were grandfathered.

The principal method for implementing the objectives of the WA is information exchange and discussions. The intent is to develop common understandings of the risks associated with the transfer of these items and to assess the scope for coordinating national control policies to combat these risks. Any such understandings are likely to be tacit, such as the one on rogue states, and would probably need some reinforcement by U.S. bilateral agreements with major partners.

Participants may submit or ask others to submit as much information as they wish. However, the scope of information that participants are initially obliged to submit is much more limited in scope and timeliness than proposed by the United States. Also, notification requirements apply to decisions on transfers to all non-members of the WA, rather than, as the United States proposed, to states and regions

(the Middle East and Southwest Asia) posing the greatest risks. The following table summarizes notification requirements for decisions to approve or deny transfers.

Since reporting on transfer decisions affecting most (over 85%) of the Dual-Use List is so limited, it will be virtually impossible to identify and assess trends or conflicts in national export practices. The reporting on Sensitive Items is better, but there is no time provided for consultation before implementation of approvals that undercut another state's policy of denial. In addition, the obligation to notify the WA of an undercutting transfer is triggered only by a notice of denial of a specific license request by a WA member, not by a national embargo policy (e.g., U.S. policy toward Iran).

Reporting requirements for arms transfers are more limited than those for dual-use technology. Participants will report twice a year the aggregate information on transfers now reported annually to the UN Register of Conventional Arms, plus the model and type of each item (except for missiles and missile launchers which are reported generically).

While measures adopted by the WA require consensus, implementation is through national legislation and policies. Moreover, all transfer decisions are the sole responsibility of each participant. A COCOM-style consensus approval (or one country veto) rule-or a variant used in nonproliferation regimes obliging members not to undercut others members' denial decisions-would arguably be useful to the extent the WA serves as a regime to deny exports to states of concern. However, even a "no undercut" rule was politically unfeasible given the mood of key states to protect their sovereign policy options.

In contrast, a veto or no undercut rule would be inappropriate and could undermine U.S. interests if applied to transfers to states not warrant-ing general denial policies, but which are in unstable regions (e.g., Israel, Egypt, India, Pakistan). In those situations, the United States and other WA members cannot reasonably bind themselves in advance to unspecified and unknown decisions made by less than a consensus. Judgments on whether transfers of conventional arms or technologies (or certain types thereof) individually or cumulatively would materially contribute to security risks-or to their mitigation-will depend on the circumstances (i.e., the nature of the conduct of particular states, the conventional and unconventional military and technological capabilities of such states, and supplier countries' defense commitments). In this context, the WA promotes transparency and responsibility, not through ensuring uniform national policies, but by providing a forum for sharing and discussing national assessments. Indeed, such exchanges are beneficial precisely because members' perspectives are likely to differ in many cases and, if supported by meaningful and timely notification requirements, now lacking in the WA framework, could engender more responsible transfer policies.

Summary of Notification Requirements

List/ Subset	Notification Required Following:		
	Approvals	Denials	Undercutting
Dual-Use/ Tier 1	No	Aggregate (2X/year)	No
Dual-Use/ Tier 2 ¹	Aggregate (2X/year)	Individual ²	Individual ³
Munitions List	No	No	No
UN Register Categories ⁴	Aggregate (2X/year)	No	No

1. Tier 2 is a subset of the Dual Use List/Tier 1 and consists of about 110 Sensitive Items—less than 15% of the Dual-Use List. The Dual-Use List covers commercial goods and technologies with sensitive military applications (e.g., computers, electronics, machine tools). Examples of Tier 2 items include stealth and jet engine hot section technology, advanced computers, and high precision machine tools.

2. The notification of a license denial must be given preferably within 30 days, but not later than 60 days, of a denial decision.

3. Notification of an undercutting license approval must be given preferably within 30 days, but not later than 60 days following approval.

4. UN Register Categories are a subset of the Munitions List and consist of major weapons systems (e.g., tanks, combat vessels/aircraft). The Munitions List also covers subsystems, components and production technologies.

Major Shortfalls

The WA's information exchanges occurred this fall and there was a constructive discussion at the December 1996 meeting of participants' policies on arms and dual-use transfers to Afghanistan, central Africa, and other areas of the world. Nevertheless, the WA falls short of U.S. goals in two major ways:

First, the United States pressed for, but was unable to secure, agreement to notify the WA concerning transfers of major arms to unstable regions in time to allow for meaningful consultations. France and Russia strongly opposed such notification, including a compromise offered by the United Kingdom (that was acceptable to the United States) whereby the notification would be limited to a small group of major arms suppliers. A French diplomat candidly stated that Paris opposed such pre-transfer notification for the same reason the United States supports it—because it would be effective.

Second, the United States had sought a guideline banning all sales of Sensitive Dual-Use List items to states of concern, not just to their military end-users. Germany, France and others having significant commercial interests in Iran refused even to notify the WA of dual-use sales for purported civilian end uses. As Under Secretary of State Lynn Davis noted in remarks to the Carnegie Foundation on 23 Jan 96, information sharing measures "need to go much further before we can say there are effective

international guidelines in place that will prevent future tyrants from embarking upon the kind of military build-up that Saddam Hussein undertook before invading Kuwait."

Recommendations

- The United States should continue trying to strengthen the WA's lean framework. Emphasis should be on increased information exchange on arms and dual-use technology transfers in regions where the risks are greatest. While expanded WA guidelines are unlikely in the near term, the United States should use voluntary information exchange procedures to advance its regional security, nonproliferation and conventional arms and technology transfer policies through the WA. For example, the United States should build support for strengthening current UN weapons sanctions against Iraq, tightening policies on dual-use exports to Iran, and pressuring China (a non-member) to stop arms transfers to Iran.
- The United States should highlight the interplay between conventional and unconventional arms buildups in regions of instability. States such as Iran and Iraq pursue such capabilities in parallel and their international covert acquisition networks often employ the same methods, companies and agents.
- The United States should produce integrated country and regional threat analyses (including arms and technology acquisition and development trends) that can be shared with WA members and supplemented in bilateral contacts.
- U.S. intelligence and policy efforts organized along weapons lines, or by country, should be concentrated, coordinated and synthesized. High priority and senior level attention is required to bring coherence to these tasks.
- The WA should develop and promote common standards for export controls, licensing and enforcement, and cooperation among national export authorities. The WA can help members and non-members upgrade their export control systems by sponsoring training sessions and conferences of licensing and enforcement officers.
- Controls on exports to Russia and other former Soviet states should continue. The United States and its former COCOM partners should use their bilateral exchanges to remain aware of differences in national export policies that support market economic development in the former Soviet states in order to prevent controlled exports from contributing to military capabilities that might cause security problems.

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